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★ APR 12 2000 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JIANG XUE QIANG, -----X

P.M. _____
TIME A.M. _____

Petitioner,

-against-

MEMORANDUM and ORDER

05-CV-1878 (SLT)

IMMIGRATION AND NATURALIZATION SERVICE
(BICE); MICHAEL GARCIA, District Director;
CHARLES MEYERS, Warden, Passaic County Jail;
JOHN ASHCROFT, U.S. Attorney General,

Respondents.

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TOWNES, United States District Judge:

Petitioner *pro se*, Jiang Xue Qiang, bring this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 (the "Petition"), seeking an order directing respondent Immigration and Naturalization Service (now, United States Immigration and Customs Enforcement or "ICE") to release him on bond or to grant him supervised release from custody pending his removal from the United States. Petitioner, who was in custody in New Jersey at the time the instant petition was filed, has since been released. Accordingly, this action is dismissed.

According to the Petition, petitioner is a citizen of the People's Republic of China who entered this country on a non-immigrant visa in 1992 and remained in the United States well beyond the six months permitted under that visa. At some unspecified point prior to 1999, the immigration authorities initiated removal proceedings against petitioner, during which petitioner agreed to depart the United States voluntarily. On January 19, 1999, the Board of Immigration Appeals issued a final order of removal, and plaintiff was subsequently released from custody pending his deportation. Petitioner did not appeal the order of removal, and does not seek to

If petitioner sought to challenge his removal, this Court would be precluded from exercising jurisdiction over this Petition by Section 106(a)(1)(B) of REAL ID Act of 2005, 8 U.S.C. § 1252(a)(5), which "unequivocally eliminates corps review of orders of removal." Marquez-Almanzar v. Immigration & Naturalization Serv., 418 F.3d 210, 215 (2d Cir. 2005). However, "[w]hile Congress specifically eliminated the district courts' habeas corpus jurisdiction over removal of removable aliens under the REAL ID Act does not affect the district courts' jurisdiction over review of removal orders, the REAL ID Act does not affect the district courts' habeas corpus claims." Brempong v. Chertoff, No. 05-CV-733 (PCD), 2006 WL 618106, at *2 (D. Conn. Mar. 10, 2006).

In their response to the instant Petition, respondents move to dismiss this Petition on two grounds. First, respondents argue that this Court lacks jurisdiction over this case because “[i]t is well-established that habeas challenges to present physical confinement must be filed in the district of confinement, here, the District of New Jersey.” See Letter of AUSA Steven M. Warshawsky to Hon. Sandra L. Townes, dated May 25, 2005, at 2. Second, respondents contend that the Petition is moot because petitioner has already been released by ICE. In support of this argument, respondents submit a “Release Notification” dated April 6, 2005, and Orders of Supervision pertaining to petitioner’s release. These documents conclusively establish that respondents’ argument, respondents’ release notification, and the orders of supervision all agree that petitioner is no longer under the supervision of ICE.

On August 3, 2004, petitioner returned to ICE custody and was detained in the Passaic County jail in New Jersey. Petitioner was not promptly deported, but remained in custody while the ICE unsuccessfully attempted to arrange his repatriation to China. In April 2005, after approximately eight months of detention, petitioner filed the instant petition, seeking to be released on bond or to be granted supervised release pending his deportation. Although the Petition was filed in this Court, it specifically states, "Venue lies in deportation, although the Petition was filed in this Court, it specifically states, "Venue lies in the United States District Court for the District of . . . New Jersey, the jurisdictional district in which the Petitioner resides." Petition at 2.

U.S.C. § 2241 is dismissed. This Court lacks jurisdiction over this challenge to petitioner's

For the reasons set forth above, this petition for a writ of habeas corpus pursuant to 28

CONCLUSION

Accordingly, the instant petition is dismissed.

moot because petitioner has already been granted the supervised release he seeks in his petition.

The documents appended to the government's response conclusively establish that the Petition is

the interest of justice pursuant to 28 U.S.C. § 1631, such a transfer would be futile in this case.

Although this Court might ordinarily transfer this petition to the District of New Jersey in

the District of New Jersey, Petition at 2, this Court lacks jurisdiction over this case.

Padilla, 542 U.S. at 443. Since the Petition specifically states that the district of confinement is

25, 2004). Accordingly, this petition can only be brought in the district of confinement.

2005); *Shehnaaz v. Ashcroft*, No. 04 Civ. 2578 (DLC), 2004 WL 2378371, at *4 (S.D.N.Y. Oct.

Customs Enforcement, No. 05-CV-3218 (CBA), 2005 WL 2334374, at *2 (E.D.N.Y. Sept. 23,

Ashcroft, 356 F.Supp.2d 367, 371 (S.D.N.Y. 2005); *Foncette v. Bureau of Immigration &*

petition." See *Deng v. Garcia*, 352 F.Supp.2d 373, 376 (E.D.N.Y. 2005); see also *Drakoulis v.*

immediate physical detention, rather than the decision to deport him to China, is a "core habeas

U.S. 426, 443 (2004). The habeas petition in this case, which challenges only petitioner's

confinement . . . lies in only one district: the district of confinement." *Rumsfeld v. Padilla*, 542

As a general rule, jurisdiction over "core habeas petitions challenging present physical

This Court agrees with the government that this Court lacks jurisdiction over this action.

Court, has not contested the government's motion to dismiss his Petition.

defendant is no longer in custody. Petitioner, whose current whereabouts are unknown to this

confinement in New Jersey. Moreover, because this petition has been rendered moot by petitioner's release from said confinement, this Court declines to transfer this case in the interest of justice pursuant to 28 U.S.C. § 1631. The Clerk of Court is directed to enter judgment in accordance with this Memorandum and Order and to close this case.

SO ORDERED.

rec
SANDRA L. TOWNES
United States District Judge

Dated: Brooklyn, New York
March 28, 2006